

Remarks

This Amendment is responsive to the Office Action mailed October 31, 2003.

Election/Restriction

In the Office Action, the Examiner stated that newly submitted claims 26 and 34 were directed to an invention that is independent or distinct from the invention originally claimed since the claims have limitations which are not cited in the specification or featured in the drawings in reference to the elected species.

The Examiner considered the claims 26 and 34 as withdrawn from consideration as being directed to a non-elected invention.

The applicant respectfully traverses the withdrawal of claims 26 and 34 as being directed to a non-elected invention. The applicant, in a Response to a Restriction Requirement on April 30, 2003, elected species which encompasses Figures 1 through 6 of the specification. Figure 1 clearly illustrates the tailgate stabilizer being used in combination with a tailgate. Accordingly, the applicant considers that claims 26-34 read on the embodiment of Figures 1 through 6 and should not be withdrawn from consideration.

35 USC § 103 Rejections

Claims 1-2, 5-7, 9, 13 and 27-33 were rejected under 35 USC § 103(a) as being unpatentable over Besonen, et al. (U.S. Patent No. 5,307,753) in view of Bowers (U.S. Patent No. 6,196,609).

In reference to claims 1 and 27, Besonen, et al. was stated to provide a counterbalance capable of use on a tailgate or a motor vehicle which at least partially controls a load applied to the counterbalance. The counterbalance was stated to have an electric element (30) that at least partially counters the load; a flexible extension limiter (25) that provides a stop which defines a fully extended position of the counterbalance and which counters loads applied to the counterbalance after the counterbalance is in the fully extended position.

In reference to claims 2 and 28, Besonen, et al. was stated to provide a counterbalance where the elastic element is a spring.

Referring to claims 5-6 and 29-30, Besonen, et al. was stated to provide a counterbalance where the flexible extension limiter is a material strap.

Regarding claims 7, 9 and 31-32, Besonen, et al. was stated to provide a counterbalance including a protective housing that at least partially covers the elastic member and the flexible extension limiter.

In reference to claims 13 and 33, the Examiner stated that Besonen, et al. provides the protective housing to include first and second tubes, with the first tube having an opening that telescopically receives a portion of the second tube.

The Examiner acknowledged that Besonen lacks the specific teaching of using the counterbalance in conjunction with a tailgate. The Examiner stated that Bowers teaches the use of a counterbalance on a tailgate and that it would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the counterbalance of Besonen on a tailgate as taught by Bowers in order to control the movement of the gate during opening and closing. The applicant respectfully traverses this rejection.

The Examiner is using impermissible hindsight to combine the counterbalance of Besonen with a tailgate as shown in Bowers. Bowers teaches a spring assembly which has many of the problems that are solved by the present invention. As stated in the present specification, when springs are used with tailgates or doors, the spring can be damaged when the door is opened too wide, or when large loads are exerted in the tailgate in an opened position. Exceeding a maximum extension point of the spring results in damage to the spring. The spring cannot provide a solid stop. (see pages 1 and 2 of the present specification).

The present invention solves the above-identified problem by adding a flexible expansion limiter such as a strap to the spring to provide a solid stop to the further extension of the spring. There is simply no teaching or suggestion in Bowers to add a flexible expansion limiter such as a strap to the spring. The benefit of adding a flexible strap to a tailgate counterbalance is apparent only after reviewing the present specification. Thus, to add the expansion limiter to a tailgate spring

lowering mechanism is impermissible hindsight. Furthermore, the counterbalance mechanism of Besonen is used to absorb shock motion for use with marine or water equipment. There is simply no teaching or suggestion in Besonen for using its counterbalance mechanism with a tailgate. Besonen is simply non-analogous art.

Accordingly, there is simply no motivation to combine the teachings of Besonen and Bowers without using the present application to arrive at that result. The applicant respectfully submits that the pending claims are patentable in view of Besonen and Bowers.

Conclusion

In view of the above arguments and comments presented, it is respectfully submitted that all pending claims are patentably distinct and unobvious over the art of record.

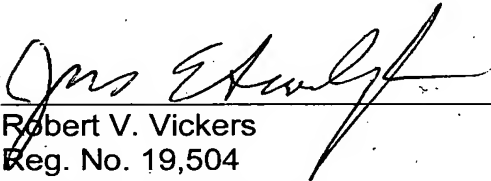
Allowance of all claims and early notice to that effect is respectfully requested.

Respectfully submitted,

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1/30/04

Date



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